in the case of the rules issued by the department of state governing the granting of passports to those who have merely declared their intention to become citizens of the United States. These regulations which cover three pages of the text, are printed on pp. 371–373 and are repeated on pp. 378–380. This may have been due to careless proofreading which appears also to be responsible for the errors in the topical analysis of chapter five which cause some confusion to the reader. It is unfortunate that these defects should appear in a work which possesses the merits of this volume.

ISIDOR LOEB.

*Der Bundesstaatsbegriff in den Vereinigten Staaten von Amerika von ihrer Unabhängigkeit bis zum Kompromise von 1850.* Von DR. JUR. ERNST MOLL. (Zurich: Schulthess and Company. 1905. Pp. 209.)

This volume is the first part of a study designed to cover the development of the American theory of the federal State down to the present time. A careful and detailed examination is made of all the discussions regarding the nature of the American Union down to and including the theory of John C. Calhoun. The several steps in the advance of philosophical and constitutional theory are described with intelligence and accuracy, and illustrated by a wealth of references to the literature of the subject. Fully half of the volume, in fact, is made of detailed footnotes containing citations of materials, not all of which, however, seems to be of real importance. The volume is characterized rather by the faithfulness and thoroughness with which the detailed development is presented, than by discovery of new material or originality of interpretation.

The doctrines of Jefferson and Madison as expressed in the Kentucky and Virginia Resolutions occasion Dr. Moll a good deal of difficulty, particularly in view of the later attitude of these statesmen. The truth seems to be that the doctrine of compact so dominated the political thought of the time that no clear cut distinction existed between natural and constitutional rights of revolution, or resistance, or secession. Many of the States expressly declared in their constitutions that the right of revolution was reserved to all citizens and was in fact an inherent and inalienable right. The men of that day neither knew nor desired to know distinctions between the constitutional right and the natural right to resist what was regarded as oppressive conduct on the part of the government; and to seek any sharp distinctions of this character is to

search for what was not there. The declaration of the Kentucky Resolutions that "as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress," is clearly a restatement of Locke's doctrine of the right of revolution applied to the American Union. That "the co-states, recurring to their natural rights in cases not made federal will concur in declaring these acts void and of no force" is another illustration of the same influence.

Dr. Moll's identification of the theories of Jefferson and Calhoun ignores this important feature of the philosophy of the time. Jefferson's doctrine rested fundamentally on his democratic fear of and opposition to "consolidated government" as the foe of human liberty, and the form of his philosophy was an application of the *naturrecht* doctrine to the nature of the federal union. Calhoun repudiated the revolutionary political theory, and resting on the doctrine that a balance of interests is necessary to the preservation of a republic, and postulating the original and indivisible sovereignty of the States, worked out a constitutional theory of nullification and secession. What Jefferson regarded as a *natural* right, he considered as a clear *constitutional* right.

It is unfortunate that Dr. Moll did not have before him, in his discussion of the doctrine of Webster, the writings of Nathan Dane, whose statement of the nationalist theory of that day is important. The Story-Webster idea of a compact is exceedingly well expressed by Dane, when he says: "Parties may, in many cases, *incipiently* consent and so contract far enough to make a statute or law operate on, and bind in their case, and as soon as the statute or law takes effect, the consent and contract cease to be noticed. Take, for instance, the case of marriage, where a statute prescribes not only its form but also divorces as in Massachusetts. The parties must first consent and agree, submit and go through the statute forms, to put the statute in operation, and make it binding upon them; but the moment it takes effect, and binds the parties together, then the law alone is regarded, and their consent and agreement are no longer noticed." (*Abridgment and Digest of American Law*, vol. ix, apx.) It was this private law idea of a contract to form the federal Union, that lay at the basis of Webster's argument, and is the foundation of it but, that, Dr. Moll does not seem to have sufficiently appreciated.

In the second and forthcoming part of the study, Dr. Moll proposes to trace the development of the theory of the federal State from 1850 down to the present time, and to give a general summary of the movement.

C. E. MERRIAM.